

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC03-833

INQUIRY CONCERNING A JUDGE, NO. 02-370
RE: CARVEN D. ANGEL

ANSWER TO FORMAL CHARGES

Carven D. Angel (Judge Angel), answers the Formal Charges filed against him by the Judicial Qualifications Commission, State of Florida (Commission), and says:

1. Judge Angel admits that on or about June 29, 2002, he attended a “Grass Roots BBQ” that was sponsored by the Marion County Republican Party. He further admits that his wife and daughter accompanied him on that occasion. He also admits, that while he was there, he campaigned for his election. Otherwise, all allegations in paragraph 1, that are not specifically admitted, are denied.

2. Judge Angel admits that on or about July 4, 2002, he attended and made a campaign speech at the Silver Springs Shores Democratic Club parade and gathering. Otherwise, all allegations in paragraph 2, that are not specifically admitted, are denied.

3. Judge Angel admits that during his campaign for election he attended a

regular meeting of the Ocala Republican Women. Otherwise, all allegations in paragraph 3, that are not specifically admitted, are denied.

4. Judge Angel admits that he, and members of his family, attended an event that was entitled “Salute to Labor Picnic and Democratic Rally.” Otherwise, all allegations in paragraph 4, that are not specifically admitted, are denied.

5. Judge Angel admits that he attended a meeting of the Republican Club of Sumter County. Otherwise, all allegations in paragraph 5, that are not specifically admitted, are denied.

6. Denied.

7. Judge Angel admits that he, along with members of his family, attended an event that was advertised as the “Dennis Baxley Family Picnic”. He further admits that, at that time, Dennis Baxley was a Republican nominee for the Florida House of Representatives. He also admits that he asked individuals who also attended that event to vote for him. Otherwise, all allegations in paragraph 7, that are not specifically admitted, are denied.

8. Judge Angel admits that his daughter attended an event styled: “Republican Grass Roots Meeting” in Brooksville, Florida, during his campaign for election. He also admits that his daughter campaigned on his behalf at that meeting. He admits that he authorized his daughter to attend the event and to campaign on

his behalf. Otherwise, all allegations in paragraph 8, that are not specifically admitted, are denied.

9. Judge Angel admits that during his campaign for election, he knowingly authorized his daughter to attend a meeting of the Palm Bay Democratic Club in Marion County, Florida. He further admits that she made a speech on his behalf. He admits that he authorized his daughter to attend that event and although he did not authorize her to publicly speak on his behalf, he did not forbid her to do so. Otherwise, all allegations in paragraph 9, that are not specifically admitted, are denied.

10. Judge Angel admits that during his campaign for election, he knowingly allowed his daughter to attend an event entitled the Oak Run Republican Club's "Candidate Forum." He also admits that he allowed his daughter to campaign for his election while at that event. Otherwise, all allegations in paragraph 10, that are not specifically admitted, are denied.

11. Judge Angel admits that during his campaign for election, he knowingly allowed his daughter to attend a meeting of the Silver Springs Shores Democratic Club. He also admits that although he did not authorize her to speak on his behalf, he did not forbid her to do so. Otherwise, all allegations in paragraph 11, that are not specifically admitted, are denied.

12. Judge Angel admits that, during his campaign for election, he attended a Marion County Republican Party Forum in Ocala and was recognized as a judicial candidate. Otherwise, all allegations in paragraph 12, that are not specifically admitted, are denied.

13. Judge Angel admits that, during his campaign for election, when privately asked to what political party he belonged, he replied that he was a Republican. Otherwise, all allegations in paragraph 13, that are not specifically admitted, are denied.

AFFIRMATIVE DEFENSES

1. The Commission lacks jurisdiction over Judge Angel because, prior to the filing by the Commission of the Formal Charges in this action, he filed a separate action in the United States District Court for the Middle District of Florida, Ocala Div. (District Court), Case # 5:03-CV-143-OC-10GRJ, seeking to enjoin the Commission from proceeding with this action. The District Court entered an Order and Final Judgment abstaining from assuming jurisdiction of Judge Angel's action (District Court Order). Judge Angel appealed the District Court Order to the United States Court of Appeals, 11th Circuit (11th Cir.) (Appeal). Until the Appeal is dismissed, or the District Court Order is affirmed, the Commission lacks jurisdiction to proceed against Judge Angel in this matter.

2. The Commission is barred from proceeding against Judge Angel in this action to the extent that its allegations in paragraphs 1 through 12, state that he violated Canon 7.A.(1)(d), Code of Judicial Conduct (Code), because he: attended “political party functions”. Canon 7.A.(1)(d), of the Code cannot legally be enforced against Judge Angel because it is void and unconstitutional. Facially, and as applied, it violates Judge Angel’s rights to freedom of speech, freedom of association, and freedom of assembly, as guaranteed by Art. I, Sections 4 and 5., Fla. Const., and by the U.S. Const. Amend. I, as applied to the states via U.S. Const. Amend. XIV, Section 1. Canon 7.A.(1)(d), of the Code, is also unconstitutional because facially, and as applied, it is vague and overbroad in that a person of ordinary intelligence is not able to ascertain the specific conduct it prohibits.

3. The Commission is barred from proceeding against Judge Angel in this action to the extent that its allegations in paragraphs 1, 2, and 6 through 13, state that he violated Canon 7.C.(3), of the Code, because: he attended political party functions; allowed members of his family to attend political party functions; spoke at political party functions, or allowed members of his family to speak at political party functions, or both, when his opponent was not “invited”; carried on, and permitted members of his family to carry on, political activity at a political party

function, including, but not limited to, handing out campaign literature and advertisements; uttered words, as well as allowed members of his family to utter words, to persons who were there, other than those words allowed by Canon 7.C.(3); otherwise improperly communicated to persons who were there, information about his election to judicial office. Canon 7.C.(3), facially, and as applied, is void and unconstitutional because it violates Judge Angel's rights to freedom of speech, freedom of association, and freedom of assembly, as guaranteed by Art. I, Sections 4 and 5 of the Fla. Const., and by the U.S. Const. Amend. I, as applied to the states via U.S. Const. Amend. XIV, Section 1. Canon 7.C.(3), is also void and unconstitutional because, facially, and as applied, it is vague and overly broad in that a person of ordinary intelligence is not able to ascertain the specific conduct it prohibits or permits.

4. The Commission is barred from proceeding against Judge Angel in this action to the extent that its allegations in paragraphs 2 through 12 state that he violated Section 105.071(1), Fla. Stat. (2001). Paragraphs 2 through 12 allege that Judge Angel violated Section 105.071(1), because: he made campaign speeches, and allowed members of his family to make campaign speeches on his behalf, at various events, described in the Formal Charges as partisan political events; attended various events that are described in the Formal Charges as partisan

political events; and otherwise participated in political events that are described in the Formal Charges as partisan political events. Section 105.071(1), is void and unconstitutional because, facially and as applied, it violates Judge Angel's right to freedom of speech, freedom of association, and freedom of assembly, as guaranteed by Art. I, Sections 4 and 5, Fla. Const., and by the U.S. Const.

Amend. I, as applied to the states via the U.S. Const. Amend. XIV, Section 1. It violates Judge Angel's right to equal protection of the laws as guaranteed by the U.S. Const. Amend. XIV, Section 1, by denying him the rights afforded to other political candidates who are required to participate in so-called nonpartisan elections in the state of Florida. It is also unconstitutional because it is vague and overly broad in that a person of ordinary intelligence is not able to ascertain the specific conduct it prohibits.

5. The Commission is barred from proceedings against Judge Angel in this action to the extent that its allegations in paragraph 13 state that he violated Section 105.071(3), Fla. Stat. (2001), because he publicly identified himself as a member of a "partisan political party." Section 105.071(3), cannot legally be enforced against Judge Angel because it is void and unconstitutional. Facially, and as applied, Section 105.071(3), violates Judge Angel's right to freedom of speech as guaranteed by Art. I, Sections 4 and 5, Fla. Const., and by the U.S. Const.

Amend. I, as applied to the states via U.S. Const. Amend. XIV, Section 1.

Facially, and as applied, it is also void and unconstitutional because it is vague and overly broad in that a person of ordinary intelligence is not able to ascertain the specific conduct it prohibits. Facially, and as applied, it further violates Judge Angel's rights to equal protection of the laws, as guaranteed to him under the U.S. Const. Amend. XVI, Section 1, because it denies him rights afforded to other political candidates who are required to participate in so-called nonpartisan elections in the state of Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via Federal Express to: Richard McFarlain, Esq., 305 South Gadsden Street, Tallahassee, Florida 32316, as Chairman and member of Florida Judicial Qualifications Commission; Thomas C. MacDonald, Jr., Esq., 1904 Holly Lane, Tampa, Florida 33629, as General Counsel for Florida Judicial Qualifications Commission; Marvin E. Barkin, Esq., Michael K. Green, Esq., Marie Tomassi, Esq., Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A., 2700 Bank of America Plaza, 101 E. Kennedy Boulevard, Post Office Box 1102, Tampa, Florida 33601-1102, as Special Counsel for Florida Judicial Qualifications Commission;

and Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications
Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; this _____ day
of June, 2003.

AYRES, CLUSTER, CURRY, McCALL,
COLLINS & FULLER, P.A.

By: _____

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Answer to Formal Charges was prepared
using Microsoft Word, Times New Roman, 14-point font, and complies with the
font requirement stated in Fla. R. App. P. 9.210(a)(2).

Edwin C. Cluster